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TRANSMITTAL OF APPEAL BRIEF

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November 14, 2006

By: Cathy Dunne
Cathy Dunne

In re Application of:	**Robert E. Hornung, et al.**	**Examiner:**	**Phi Dieu Tran A**
Application No.:	**10/683,568**	**Art Unit:**	**3637**
Filed:	**October 10, 2003**		
Title:	**GRID MUNTIN RETAINING CLIPS FOR MUNTINS**		

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Respectfully submitted,

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Date: November 14, 2006
Attorney Docket No.: IND-126

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Application of:

Robert E. Hornung, et al.

Serial No.: 10/683,568

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Examiner: Phi Dieu Tran A

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For: **GRID MUNTIN RETAINING CLIPS FOR MUNTINS**

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By: Cathy Dunne
Cathy Dunne

APPELLANT'S BRIEF (37 C.F.R. 41.37)

This brief is in furtherance of the Notice of Appeal filed in this case on October 2, 2006 (mailed September 28, 2006).

The fees required under §41.20(b)(2) are accounted for in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief contains these items under the following headings, and in the order set forth below (37 C.F.R. 41.37(c)):

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(1) REAL PARTY IN INTEREST **3**
(2) RELATED APPEALS AND INTERFERENCES **3**
(3) STATUS OF CLAIMS **3**
(4) STATUS OF AMENDMENTS **4**
(5) SUMMARY OF CLAIMED SUBJECT MATTER **5**

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NOV 14 2006
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(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL 14

(7) ARGUMENT: DISCUSSION OF REJECTIONS UNDER 35 U.S.C. §102 14

  (7)(1) Claim 107 Is Not Anticipated by McCandless 15

    (7)(1.1) Overview of The Claimed Invention 15

    (7)(1.2) Discussion Of Final Office Action and Rejection of Claim 107. 15

  (7)(2) Claim 108 Is Not Anticipated by Boone et al. 19

    (7)(2.1) Overview of the Claimed Invention 19

    (7)(2.2) Discussion of Final Office Action and Rejection of Claim 108 19

  (7)(3) Claims 110-114 and 116-123 Are Not Anticipated by McCandless .. 20

    (7)(3.1) Overview of the Claimed Invention 20

    (7)(3.2) Discussion of Final Office Action and Rejection of Claim 110 21

    (7)(3.3) Discussion of Final Office Action and Rejection of Dependent Claims 111-114 and 116-123 25

(8) CONCLUSION 28

(9) CLAIMS APPENDIX 29

(10) EVIDENCE APPENDIX 33

  EVIDENCE EXHIBIT A 34

  EVIDENCE EXHIBIT B 49

  EVIDENCE EXHIBIT C 50

(11) RELATED PROCEEDINGS APPENDIX 51

(1) REAL PARTY IN INTEREST

The real party in interest in this appeal is: Sashlite, LLC, 727 Post Road East, Westport, Connecticut 06880, the assignee of a 100% interest in the application.

(2) RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences that are related to this appeal or that will directly affect, be directly affected by, or have a bearing on the Board's decision in this appeal.

(3) STATUS OF CLAIMS

The status of the claims in this application is:

A. Total Number Of Claims In Application:

There are 15 claims pending in the application. The pending claims are claims 107, 108, 110-114, and 116-123.

B. Status Of All The Claims:

1. Claims canceled: 1-106, 109 and 115
2. Claims withdrawn from consideration but not canceled: None
3. Claims pending: 107, 108, 110-114, and 116-123
4. Claims allowed: None
5. Claims objected to: None

5. Claims rejected: 107, 108, 110-114, and 116-123.

C. Claims Being Appealed:

The claims being appealed are: 107, 108, 110-114, and 116-123.

(4) STATUS OF AMENDMENTS

Appellants filed a Preliminary Amendment on March 10, 2004 (mailed March 8, 2004). The specification was amended and Claims 13-36, 41-42, 51-52, 55-69, 71, and 73-84 were cancelled. Claims 53 and 54 were amended.

An "Amendment and Response to Restriction/Election Requirement" was filed on August 11, 2004 (mailed August 9, 2004). In this communication, claims 1-84 were cancelled and claims 87-90 were withdrawn. New claims 93-103 were added. The invention of Group II (claims 43-38, 85, 86 and 91-92) was elected, together with the species of figures 22A-22B. It was indicated that original claims 85-86, 91-92 and new claims 93-101 read on the elected species.

In response to an Office Action mailed on November 2, 2004, Appellants filed an Amendment on January 3, 2005 (mailed December 30, 2004). In this Amendment, claims 85-86 were amended, claims 87-90 were cancelled, claims 91-103 were amended, and new claims 104-106 were added.

A further Restriction Requirement was issued on April 7, 2005. On May 5, 2005, an Amendment and Response to Restriction Requirement was filed (mailed May 3, 2005), canceling claims 1-106 and adding new claims 107-121.

Appellants filed an Amendment on September 21, 2005 (mailed on September 19, 2005) in response to a July 27, 2005 final Office Action. Clarifying amendments were made to the specification. In addition, claims 107, 108, and 110 (the independent claims) were amended.

On October 6, 2005, a personal interview was held with the Examiner. In accordance with the personal interview, a Supplemental Amendment was filed on October 12, 2005 in which Claims 107 and 110 were amended, and new claims 122-123 were added. Upon receipt of an Advisory Action dated October 21, 2005, Appellants filed a Request for Continued Examination (RCE).

On April 11, 2006, an Amendment was filed (mailed April 6, 2006) amending claims 107, 110, and 114 in response to an Office Action dated December 12, 2005. Claim 115 was cancelled. A final Office Action followed on June 28, 2006.

In response to the final Office Action, Appellants filed an Amendment on September 18, 2006 (mailed on September 14, 2006) to place the application into better form for appeal. In particular, claim 110 was amended to overcome an indefiniteness rejection and claim 109 was cancelled. An Advisory Action dated September 28, 2006 indicated that the Amendment after final would be entered for purposes of appeal, and that it overcame the indefiniteness rejection to claim 110.

This appeal was filed on October 2, 2006 (mailed September 28, 2006). The claims on appeal are claims 107-108, 110-114 and 116-123 as set forth in the Amendment after final filed on September 18, 2006 and reproduced in their final form in the Claims Appendix attached hereto.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

The claimed invention relates to clips for mounting a muntin bar between spaced parallel glazing panes of an integrated sash. An "integrated sash" (e.g., for thermopane windows or doors) is defined in Appellants' specification as a sash in which a spacing and mounting structure is provided for two or more spaced, parallel glazing panes or sheets. Simulated muntins (sometimes referred to as "muntin bars" or "divided lights") are mounted between the panes to provide a decorative look, such as to simulate colonial windows. See, e.g., paragraph [0003] of Appellants' specification.

Appellants' inventive clip structures are set forth in the presently pending claims as follows:

Claim 107:

"A clip for mounting a muntin bar between spaced parallel glazing panes of an integrated sash, comprising:

Figures 22A and 22B illustrate a clip 220 for mounting a muntin bar (e.g., muntin bar 22 shown in various figures, such as Figure 1) between spaced parallel glazing panes of an integrated sash (e.g., panes 403, 404 shown in Figure 40 or panes 30 shown in Figure 3b of US Patent 6,286,288). A copy of US Patent 6,286,288, which is incorporated by reference into the present disclosure (see Appellants' specification, paragraph [0003]), is attached hereto as EVIDENCE EXHIBIT A.

an upper platform;

The upper platform is shown in the annotated version of Figures 22A and 22B attached hereto as EVIDENCE EXHIBIT B. An equivalent annotated version of Figures 22A and 22B was previously submitted to the Examiner with Appellants' Amendment filed on April 11, 2006. A sample clip similar to that illustrated in Figures 22A and 22B is submitted herewith as EVIDENCE EXHIBIT C. A sample of the same clip was given to the Examiner during the October 6, 2005 personal interview in this application.

a lower resilient finger extending from a first side of said upper platform generally parallel to and underneath said upper platform substantially all the way to a second side of said upper platform opposite said first side for releasably mounting said clip to the integrated sash;

The lower resilient finger is shown in Figure 22A of EVIDENCE EXHIBIT B. It extends from a first side of the upper platform, and continues generally parallel to and underneath the upper platform substantially all the way to a second side of the upper platform opposite the first side. The first and second sides of the upper platform are shown in EVIDENCE EXHIBIT B. The purpose of the lower resilient finger is to releasably mount (e.g., snap) the clip to the integrated sash, as explained, e.g., in Appellants' specification, paragraphs [0177] and [0179].

a muntin retainer for engaging the end portion of said muntin bar, said muntin retainer projecting from an upper surface of the upper platform at a substantially 90° angle that will maintain the main portion of said muntin bar between and in parallel with the spaced parallel glazing panes.

The muntin retainer is shown in EVIDENCE EXHIBIT B. Examples of muntin bars engaged by a muntin retainer are illustrated throughout Appellants' specification and drawings. See, for example, Figures 9C and 43B, explained in paragraphs [0160] and [0203], respectively. As illustrated in Figures 22A and 22B, the muntin retainer projects from the upper surface of the upper platform at a substantially 90° angle (EVIDENCE

EXHIBIT B). This structure will maintain the main portion of the muntin bar between and in parallel with spaced parallel glazing panes when mounted on the glazing legs 203a and 203b. An example of muntin bars 22 mounted between and in parallel with spaced parallel glazing panes is provided in Appellants' Figure 9C. Similarly, Figure 40 shows muntin bars 400 mounted between and in parallel with spaced parallel glazing panes 403, 404, described in paragraph [0199] of the specification.

Claim 108:

"A clip for positioning at least one of a muntin bar or additional glazing pane between a pair of spaced glazing panes, comprising:

Figures 22A and 22B illustrate a clip 220 for mounting a muntin bar (e.g., muntin bar 22 shown in various figures, such as Figure 1) between spaced parallel glazing panes of an integrated sash (e.g., panes 403, 404 shown in Figure 40 or panes 30 shown in Figure 3b of US Patent 6,286,288). A copy of US Patent 6,286,288, which is incorporated by reference into the present disclosure (see Appellants' specification, paragraph [0003]), is attached hereto as EVIDENCE EXHIBIT A.

a base,

The upper platform of the clip 220 (illustrated in EVIDENCE EXHIBIT B) is a "base."

a base support including a pair of side walls disposed on a bottom side of the base,

The lower resilient finger illustrated in EVIDENCE EXHIBIT B is a "base support" and includes a pair of side walls disposed on the bottom side of the base.

the base support being adapted to mount the clip in a channel of a spacing and mounting structure located between said pair of spaced glazing panes,

The space between glazing leg 203a and 203b comprises a channel of a spacing and mounting structure. When the glazing panes are mounted on the outside vertical walls of the glazing legs 203a, 203b, the spacing and mounting structure formed by the glazing legs is located therebetween. Such structure is clearly shown, e.g., in Appellants' Figure 40, as well as in Figure 3b of US Patent 6,286,288, which is incorporated by reference into the present disclosure. As can be seen in Appellants' Figures 22A and 22B (EVIDENCE EXHIBIT B), the base support of the clip (i.e., lower resilient finger) is adapted to mount the clip in the channel of the spacing and mounting structure.

a retainer projecting outwardly from and substantially perpendicularly to said base, said retainer being adapted to hold said at least one of a muntin bar or additional glazing pane.

The muntin retainer illustrated in Appellants' Figures 22A and 22B (EVIDENCE EXHIBIT B) projects outwardly from and substantially perpendicularly to the base (upper platform). The retainer is adapted to hold at least one of a muntin bar or an additional glazing pane. Figure 9C, for example, illustrates retainer 24 holding a muntin bar 22.

Claim 110:

A clip for mounting, between spaced parallel glazing panes of an integrated sash, a muntin bar having an end portion for engagement with said clip and a main portion for providing a decorative effect visible between said glazing panes, said clip comprising:

Figures 22A and 22B illustrate a clip 220 for mounting a muntin bar (e.g., muntin bar 22 shown in various figures, such as Figure 1) between spaced parallel glazing panes of an integrated sash (e.g., panes 403, 404 shown in Figure 40 or panes 30 shown in Figure 3b of US Patent 6,286,288). A copy of US Patent 6,286,288, which is incorporated by reference into the present disclosure (see Appellants' specification, paragraph [0003]), is attached hereto as EVIDENCE EXHIBIT A.

The muntin bar has an end portion for engagement with the clip, as can be seen in Figure 40. The muntin bar also has a main portion for providing a decorative effect visible between the glazing panes, as also shown in Figure 40. The criss-cross pattern of the muntin grid 400 provides the desired "divided lights" decorative effect.

an upper platform including an upper surface and a lower surface opposite said upper surface;

The upper platform is shown in the annotated version of Figures 22A and 22B (EVIDENCE EXHIBIT B). The upper platform has an upper surface (the top) and a lower surface opposite the upper surface (the bottom). See also, Appellants' specification, paragraphs [0177] and [0179].

a lower resilient finger extending from a first side of said upper platform proximate said lower surface and generally parallel to said lower surface substantially all the way to a second side of said upper platform opposite said first side,

The lower resilient finger is shown in EVIDENCE EXHIBIT B. It extends from a first side of the upper platform proximate the lower surface and generally parallel to the lower surface substantially all the way to a second side of the upper platform opposite the first side. The first and second sides of the upper platform are shown in EVIDENCE EXHIBIT B.

said lower resilient finger including a free end portion configured to resiliently couple to a portion of a mounting structure of said sash; and

The lower resilient finger, as shown in EVIDENCE EXHIBIT B, includes a free end portion. This free end portion is configured to resiliently couple to a portion of a mounting structure (glazing leg 203b) as shown. See also, paragraph [0179] of Appellants' specification.

a muntin retainer for engaging the end portion of said muntin bar, said muntin retainer extending away from said upper surface of said upper platform at a substantially 90° angle that will maintain the main portion of said muntin bar between and in parallel with the spaced parallel glazing panes.

The muntin retainer is shown in EVIDENCE EXHIBIT B. Examples of muntin bars engaged by a muntin retainer are illustrated throughout Appellants' specification and drawings. See, for example, Figures 9C and 43B, explained in paragraphs [0160] and [0203], respectively. As illustrated in Figures 22A and 22B, the muntin retainer projects from the upper surface of the upper platform at a substantially 90° angle (EVIDENCE EXHIBIT B). This structure will maintain the main portion of the muntin bar between and in parallel with spaced parallel glazing panes when mounted on the glazing legs 203a and 203b. An example of muntin bars 22 mounted between and in parallel with spaced parallel glazing panes is provided in Appellants' Figure 9C. Similarly, Figure 40 shows muntin bars 400 mounted between and in parallel with spaced parallel glazing panes 403, 404, described in paragraph [0199] of the specification.

Claim 111:

The clip of claim 110 wherein said lower resilient finger is configured to flex upon insertion between glazing legs of said mounting structure and retain the clip between said glazing legs.

As seen in Figures 22A and 22B, the lower resilient finger is cantilevered from the first side of the upper platform. The operation of the clip is explained in Appellants' specification, paragraphs [0177] and [0179]. In particular, the muntin retaining clip is adapted to snap between glazing legs 203a, 203b of sash frame 203. The upper platform of the clip is supported by the upper surfaces (top walls) of the glazing legs 203a, 203b. By snapping the lower resilient finger into the channel formed by the glazing legs 203a, 203b, the clip is retained therebetween.

Claim 112:

The clip of claim 110 wherein at least one of said upper platform and said lower resilient finger is adapted to align said muntin retainer when mounted to said mounting structure despite variations in the dimensions of said mounting structure.

As can be seen, e.g., in Figures 22A and 22B, when the clip is situated on the mounting structure 203, the muntin retainer (element that resembles a Christmas tree) is aligned such that a muntin bar affixed thereto will be properly held between parallel glass panes mounted to the outside surfaces of glazing legs 203a and 203b.

Claim 113:

The clip of claim 110 wherein said end portion of said lower resilient finger is configured to couple to a locating notch formed in said mounting structure.

As shown in Figure 22A of EVIDENCE EXHIBIT B, the tip of the lower resilient finger ("free end portion") fits into a locating notch on the inside wall of glazing leg 203b. Moreover, as shown in Figure 21A and described in paragraph [0178] of Appellants' specification, the lower portion 210a of the muntin retaining clip fits within a locating notch 207 provided in one of the glazing legs.

Claim 114:

The clip of claim 110 wherein said first side and said second side are configured to resiliently mount to said mounting structure.

As shown in Figure 22A of EVIDENCE EXHIBIT B, the first and second sides of the clip resiliently mount to the mounting structure formed by glazing legs 203a and 203b, via the lower resilient finger.

Claim 116:

The clip of claim 114 wherein said first side and said second side of said upper platform are mountable on top walls of glazing legs forming said mounting structure.

The top walls of the glazing legs are identified in Figure 22B of EVIDENCE EXHIBIT B. The glazing legs form the mounting structure 203. The first side and second side of the upper platform are mounted on the top walls of the glazing legs, as illustrated in Figures 22A and 22B.

Claim 117:

The clip of claim 110 wherein said lower resilient finger is configured to flex when inserted into a portion of said mounting structure.

The lower resilient finger, identified in Figure 22A of EVIDENCE EXHIBIT B, is cantilevered from the upper platform. As a "resilient" finger, this element will flex when inserted into the channel formed between glazing legs 203a and 203b of the mounting structure.

Moreover, as indicated in paragraph [0210] of Appellants' specification, the clips "may be of any material, combinations of material, any form or degree of flexibility, rigidity, softness, hardness, or other makeup so as to provide a secure seat for the grid assembly or grid structure. Any combination of flexibility, rigidity, softness, hardness or other makeup may be incorporated so as to provide appropriate means of securing the muntin retaining clip to the sash assembly. Any of the illustrations shown may incorporate any combination of features illustrated in any other design depicted."

Claim 118:

The clip of claim 110 wherein said lower resilient finger is adapted to snap-fit to said mounting structure.

As explained in paragraphs [0177] and [0179] of Appellants' specification, and illustrated in Figure 22A, the lower resilient finger is snap-fit to the mounting structure

203. Paragraph [0101] further confirms that the muntin retaining clip snaps between two upstanding glazing legs of an integrated sash frame

Claim 119:

The clip of claim 110 wherein said upper platform is adapted to snap-fit to said mounting structure.

As shown in Figure 22A of EVIDENCE EXHIBIT B, the upper platform is snap-fit to the mounting structure formed by glazing legs 203a and 203b, via the lower resilient finger.

Claim 120:

The clip of claim 110 wherein said upper platform and said lower resilient finger are integral.

As shown in Figures 22A and 22B, the upper platform and lower resilient finger are integral.

Claim 121:

The clip of claim 110, wherein said lower resilient finger is cantilevered from said upper platform.

As shown in Figures 22A and 22B, the lower resilient finger is cantilevered from the upper platform.

Claim 122:

The clip of claim 107 wherein said angle is 90°.

As shown in Figures 22A and 22B, the muntin retainer projects from an upper surface of the upper platform at a 90° angle.

Claim 123:

The clip of claim 110 wherein said angle is 90°.

As shown in Figures 22A and 22B, the muntin retainer projects from an upper surface of the upper platform at a 90° angle.

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether claim 108 is anticipated under 35 U.S.C. §102(a) by Boone et al. US Patent 6,345,485. (Claim 109, previously included in this rejection, has been cancelled).
2. Whether claims 107, 110-114, and 116-123 are anticipated under 35 U.S.C. §102(b) by McCandless US Patent 6,289,641.

(7) ARGUMENT: DISCUSSION OF REJECTIONS UNDER 35 U.S.C. § 102

Appellants refer to MPEP §2131 - Anticipation, which states that:

> " 'A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.' *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). 'When a claim covers several structures or compositions, either generically or as alternatives, the claim is deemed anticipated if any of the structures or compositions within the scope of the claim is known in the prior art.' *Brown v. 3M*, 265 F.3d 1349, 1351, 60 USPQ2d 1375, 1376 (Fed. Cir. 2001) (claim to a system for setting a computer clock to an offset time to address the Year 2000 (Y2K) problem, applicable to records with year date data in 'at least one of two-digit, three-digit, or four-digit' representations, was held anticipated by a system that offsets year dates in only two-digit formats). See also MPEP § 2131.02. 'The identical invention must be shown in as complete detail as is contained in the ... claim.' *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990)."

Appellants respectfully submit that the criteria for establishing anticipation have not been met.

(7)(1) CLAIM 107 IS NOT ANTICIPATED BY McCANDLESS

(7) (1.1) Overview of the Claimed Invention

The present invention as set forth in independent claim 107 is directed towards clips for mounting a muntin bar between spaced glazing panes of an integrated sash. The clip has the following elements:

(i) an upper platform.

(ii) a lower resilient finger extending from a first side of said upper platform generally parallel to and underneath said upper platform substantially all the way to a second side of said upper platform opposite said first side for releasably mounting said clip to the integrated sash.

(iii) a muntin retainer for engaging the end portion of said muntin bar, said muntin retainer projecting from an upper surface of the upper platform at a substantially 90° angle that will maintain the main portion of said muntin bar between and in parallel with the spaced parallel glazing panes.

(7) (1.2) Discussion of Final Office Action and Rejection of Claim 107

The Examiner has rejected claim 107 as being anticipated by McCandless. US Patent 6,289,641. This rejection is improper, as McCandless does not disclose each and every one of elements (i) through (iii) noted above.

McCandless discloses a sheet retaining member that is maintained on the legs of an insulating glass (IG) unit spacer frame between the glass sheets. The retaining member is used to hold a third pane of glass between the two outer panes, thereby forming a triple-pane IG unit.

The Examiner points to McCandless Figure 7, when viewed "in the state of upside down", as showing each of the elements of Appellants' claimed structure. Specifically, the Examiner contends that Appellants' upper platform (element (i) above) is met by upper surface 140 of the support member 84 (see McCandless column 10, lines 37-40). The Examiner equates Appellants' lower resilient finger (element (ii) above) with McCandless' finger 82. With respect to the muntin retainer (element (iii) above), the Examiner points to "the part in the middle perpendicular to part 140" of McCandless.

There are various significant problems with the Examiner's reading of McCandless. These include:

(1) McCandless does not disclose a clip for mounting a muntin bar. The retainer in McCandless is solely for holding at least one additional pane of glass between the outer panes of an IG unit. This is clear from the McCandless specification, e.g., at column 1, lines 6-10 and column 2, lines 28-30.

(2) The "fingers" 80,82 provided by McCandless are used to "engage and/or capture" a sheet of glass (i.e., inner sheet 32) therebetween, as described in column 6, lines 61-67 and shown in Figures 2, 3, and 4, and as further described in column 10, lines 37-40 with respect to Figure 7. Figure 7 shows the McCandless structure in an intermediate position, i.e., when the glass sheet 32 is being put into position by "biasing the finger 82 against the upper surface 140 of support platform 84. The sheet 32 is further moved to the left against the finger 80 until the peripheral edge of the inner sheet clears the end of the finger 82 ***after which the finger 82 moves to the unbiased position as shown in FIG. 8***. The inner sheet 32 is now captured between the fingers 80 and 82" (emphasis added). See column 10, lines 37-44. Thus, contrary to the Examiner's reading of McCandless, finger 82 does not normally extend "generally parallel to and underneath said upper platform" as required by Appellants' claim 107. Figure 7 illustrates only an interim position of the finger 82, when glass sheet 32 is temporarily holding the finger down during installation of the glass sheet between the fingers 80, 82. Once the glass sheet has been installed, the finger 82 is disposed at an angle to the upper surface 140 as shown in Figure 8.

(3) The fingers 80,82 in their unbiased position are provided at an angle of about 30° to the upper surfaces of the support member. (Figure 5 and column 10, lines 28-30).

(4) The support shim 117 having an inverted Y shape is used solely to prevent the retaining member from dropping between the legs of the spacer frame. (Figures 2, 5, 7, 8 and column 7, lines 48-60).

(5) The sheet retaining member 34 is mounted on the spacer frame either by edge clamping between fingers 92 and extensions 88 (Figure 2 and column 7, lines 37-40), by

a groove 132 engaging the edge of the metal spacer frame 28 (Figure 3 and column 8, lines 29-33), or by mechanical or adhesive means (Figure 4 and column 7, lines 40-47).

Upon considering these points one at a time, it will be clear that McCandless does not anticipate Appellants' claimed invention.

With respect to point (1), Appellants' claim 107 specifically refers to a clip for mounting a muntin bar between spaced parallel glazing panes. A computer text search of McCandless indicates that the word "muntin" is never mentioned in the patent. As noted above, McCandless discloses a retainer for a glazing pane; not for a muntin bar.

With respect to point (2), McCandless teaches fingers 80,82 for holding a glazing pane ("glass sheet"). These fingers are not provided for "releasably mounting" a "clip" to an integrated sash, as required by Appellants' claim 107. Moreover, Appellants' claimed "lower resilient finger" extends from a first side of the upper platform generally parallel to and underneath the upper platform ***substantially all the way*** to a second side of the upper platform opposite said first side. This structure is clearly shown in Figure 22A of attached EVIDENCE EXHIBIT B. To the contrary, the fingers 80, 82 of McCandless do not extend from a first side of the support platform 84 substantially all the way to a second side of the support platform opposite the first side. Instead, as shown e.g., in Figure 2, McCandless' retaining member 34 includes two oppositely opposed fingers 80, 82 for holding the glass sheet 32, and each finger 80, 82 terminates in the ***middle*** of the support platform 84. This ensures that the glass sheet 32 is centrally located between the outer glass sheets 24, 26 held by the spacer frame 28 on which the retaining member 34 is mounted. Thus, element (ii) of Appellants' claim 107 (the lower resilient finger) is not disclosed by McCandless.

With respect to point (3), Appellants' claim 107 requires the lower resilient finger to be ***generally parallel to*** and ***underneath*** the upper platform. As noted in the McCandless specification (Figure 5 and column 10, lines 28-30), the fingers 80,82 in their unbiased position are provided at an angle of about 30° to the upper surfaces of the support member. And, despite the Examiner's attempted reading of Appellants' claims on Figure 7 of McCandless "viewed ... in the state of upside down", it is clear that in its intended operation, the retaining member 34 of McCandless requires the fingers 80, 82 to be ***above*** (not underneath) the support platform 84. Thus, it is indisputable that Appellants' lower resilient finger, as set forth in claim 107, is not disclosed by McCandless.

With respect to point (4), the Examiner contends that "the part in the middle perpendicular to part 140" (i.e., the support shim 117 of McCandless) anticipates Appellants' claimed muntin retainer. However, support shim 117 cannot possibly function as a muntin retainer "that will maintain the main portion of said muntin bar between and in parallel with the spaced parallel glazing panes" as claimed. Support shim 117 merely prevents the retaining member from dropping between the legs of the spacer frame (Figures 2, 5, 7, 8 and column 7, lines 48-60). It is not a muntin retainer. And, even if an attempt were made to use the Y shaped support shim to retain a muntin bar, the muntin bar would point downward, in the opposite direction that the glass sheets 24, 26 and 32 point. Thus, any such muntin bar would not be maintained ***between and in parallel with the spaced parallel glazing panes*** as set forth in Appellants' claim 107. It is therefore clear that McCandless does not disclose element (iii) of claim 107 (the muntin retainer).

With respect to point (5), Appellants' claim 107 requires the clip to be releasably mounted to the integrated sash via the lower resilient finger. McCandless discloses three different ways for mounting the retaining member 34 to the spacer frame 28. These are by (a) edge clamping, (b) a groove, or (c) mechanical or adhesive means. None of these are equivalent to Appellants' claimed mounting structure where a lower resilient finger, that extends from a first side of an upper platform generally parallel to and underneath the upper platform substantially all the way to a second side of the upper platform opposite the first side, is used to releasably mount the clip to an integrated sash. Accordingly, McCandless clearly does not disclose the structure or contain the elements set forth in Appellants' claim 107.

Since McCandless does not disclose each and every element of Appellants' claim 107, this claim is not anticipated by the cited reference.

(7)(2) CLAIM 108 IS NOT ANTICIPATED BY BOONE ET AL.

(7) (2.1) Overview of the Claimed Invention

The present invention as set forth in claim 108 is directed towards clips for mounting a muntin bar (or an additional glazing pane) between a pair of spaced glazing panes. The clip has the following elements:

(i) a base.

(ii) a base support that includes a pair of side walls disposed on a bottom side of the base. The base support is adapted to mount the clip in a channel of a spacing and mounting structure located between the glazing panes.

(iii) a retainer that projects outwardly from and substantially perpendicularly to the base. The retainer is adapted to hold a muntin bar or an additional glazing pane (e.g., for a triple-pane window).

(7) (2.2) Discussion of Final Office Action and Rejection of Claim 108

The Examiner has rejected claim 108 as being anticipated by Boone et al. US Patent 6,345,485. This rejection is improper, as Boone et al. does not disclose each and every one of elements (i) through (iii) noted above.

Boone et al. does not show a clip that is anything like that claimed by Appellants, even when viewed "in the state of upside down" as proposed by the Examiner in the final Office Action (see page 2 of the June 28, 2006 Office Action, second to last paragraph). Instead, Boone et al. discloses a sheet retaining member 120 for holding an additional "sheet" (i.e., glazing pane) within a conventional insulating glass (IG) assembly. See, e.g., Boone et al. Figure 8 which illustrates the sheet retaining member 120 holding a central glazing pane 30 between outer panes 22, 24 of a conventional IG unit.

Referring to Figure 9 of Boone et al., the Examiner contends that Appellants' "base" is shown by element 126, and that the "base support" including a pair of side walls is shown by elements 122 and their connected sections. The Examiner does not specify which element would correspond to Appellants' claimed "retainer that projects outwardly from and substantially perpendicularly to the base." If the Examiner is contending that the Y shaped support shim 140 can be used as a muntin retainer, this contention is unfounded. The purpose of support shim 140 is to prevent the edge retaining member 120 from dropping between the legs 40 and 42 of the spacer frame 28, shown in Figure 2. The support shim 140 is clearly not designed or intended to hold a muntin bar between the glazing panes (and in fact, points in the wrong direction to do so).

Moreover, Boone et al. teaches that a muntin bar, if provided, is accommodated by a hole 152 that receives the end 150 of the muntin bar 39. See Boone et al. Figure 9 and column 15, lines 4-7. By providing a ***hole*** for accommodating the end of a muntin bar, Boone et al. teaches away from providing "a ***retainer projecting outwardly from and substantially perpendicularly to said base***, said retainer being adapted to hold said at least one of a muntin bar or additional glazing pane", as set forth in Appellants' claim 108 (emphasis added). A hole does not project outwardly from the surface in which it exists. Thus, it is clear that Boone et al. does not include the outwardly projecting retainer element required by Appellants' claim 108. For this reason alone, the rejection of claim 108 under 35 U.S.C. §102(a) based on Boone et al. cannot stand.

(7)(3) CLAIMS 110-114 and 116-123 ARE NOT ANTICIPATED BY McCANDLESS

(7) (3.1) Overview of the Claimed Invention

The present invention as set forth in independent claim 110 is directed towards clips for mounting a muntin bar between spaced glazing panes of an integrated sash. The muntin bar has an end portion for engagement with the clip and a main portion for providing a decorative effect visible between the glazing panes. The clip has the following elements:

(i) an upper platform including an upper surface and a lower surface opposite the upper surface.

(ii) a lower resilient finger extending from a first side of said upper platform proximate the lower surface and generally parallel to the lower surface substantially all the way to a second side of said upper platform opposite said first side.

(iii) a free end portion of the lower resilient finger configured to resiliently couple to a portion of a mounting structure of the sash.

(iv) a muntin retainer for engaging the end portion of said muntin bar, said muntin retainer extending away from said upper surface of the upper platform at a substantially 90° angle that will maintain the main portion of said muntin bar between and in parallel with the spaced parallel glazing panes.

(7) (3.2) Discussion of Final Office Action and Rejection of Claim 110

The Examiner has rejected claim 110 as being anticipated by McCandless. US Patent 6,289,641. This rejection is improper, as McCandless does not disclose each and every one of elements (i) through (iv) noted above.

McCandless discloses a sheet retaining member that is maintained on the legs of an insulating glass (IG) unit spacer frame between the glass sheets. The retaining member is used to hold a third pane of glass between the two outer panes, thereby forming a triple-pane IG unit.

The Examiner points to McCandless Figure 7, when viewed "in the state of upside down", as showing each of the elements of Appellants' claimed structure. Specifically, the Examiner contends that Appellants' upper platform (element (i) above) is met by upper surface 140 of the support member 84 (see McCandless column 10, lines 37-40). The Examiner equates Appellants' lower resilient finger (element (ii) above) with McCandless' finger 82. With respect to the muntin retainer (element (iii) above), the Examiner points to "the part in the middle perpendicular to part 140" of McCandless.

There are various significant problems with the Examiner's reading of McCandless. These include:

(1) McCandless does not disclose a clip for mounting a muntin bar. The retainer in McCandless is solely for holding at least one additional pane of glass between the

outer panes of an IG unit. This is clear from the McCandless specification, e.g., at column 1, lines 6-10 and column 2, lines 28-30.

(2) The "fingers" 80,82 provided by McCandless are used to "engage and/or capture" a sheet of glass (i.e., inner sheet 32) therebetween, as described in column 6, lines 61-67 and shown in Figures 2, 3, and 4, and as further described in column 10, lines 37-40 with respect to Figure 7. Figure 7 shows the McCandless structure in an intermediate position, i.e., when the glass sheet 32 is being put into position by "biasing the finger 82 against the upper surface 140 of support platform 84. The sheet 32 is further moved to the left against the finger 80 until the peripheral edge of the inner sheet clears the end of the finger 82 ***after which the finger 82 moves to the unbiased position as shown in FIG. 8***. The inner sheet 32 is now captured between the fingers 80 and 82" (emphasis added). See column 10, lines 37-44. Thus, contrary to the Examiner's reading of McCandless, finger 82 does not normally extend "generally parallel to said lower surface" as required by Appellants' claim 110. Figure 7 illustrates only an interim position of the finger 82, when glass sheet 32 is temporarily holding the finger down during installation of the glass sheet between the fingers 80, 82. Once the glass sheet has been installed, the finger 82 is disposed at an angle to the upper surface 140 as shown in Figure 8.

(3) The fingers 80,82 in their unbiased position are provided at an angle of about 30° to the upper surfaces of the support member. (Figure 5 and column 10, lines 28-30).

(4) The support shim 117 having an inverted Y shape is used solely to prevent the retaining member from dropping between the legs of the spacer frame. (Figures 2, 5, 7, 8 and column 7, lines 48-60).

(5) The sheet retaining member 34 is mounted on the spacer frame either by edge clamping between fingers 92 and extensions 88 (Figure 2 and column 7, lines 37-40), by a groove 132 engaging the edge of the metal spacer frame 28 (Figure 3 and column 8, lines 29-33), or by mechanical or adhesive means (Figure 4 and column 7, lines 40-47).

Upon considering these points one at a time, it will be clear that McCandless does not anticipate Appellants' claimed invention.

With respect to point (1), Appellants' claim 110 specifically refers to a clip for mounting a muntin bar between spaced parallel glazing panes. A computer text search of McCandless indicates that the word "muntin" is never mentioned in the patent. As noted above, McCandless discloses a retainer for a glazing pane; not for a muntin bar.

With respect to point (2), McCandless teaches fingers 80,82 for holding a glazing pane ("glass sheet"). These fingers are not provided to "resiliently couple" a "clip" to a mounting structure of a sash, as required by Appellants' claim 110. Further, McCandless does not disclose the use of "a free end portion" of a lower resilient finger to accomplish such a resilient coupling. Moreover, Appellants' claimed "lower resilient finger" extends from a first side of the upper platform proximate and generally parallel to the lower surface of the upper platform ***substantially all the way*** to a second side of the upper platform opposite said first side. This structure is clearly shown in Figure 22A of attached EVIDENCE EXHIBIT B. To the contrary, the fingers 80, 82 of McCandless do not extend from a first side of the support platform 84 substantially all the way to a second side of the support platform opposite the first side. Instead, as shown e.g., in Figure 2, McCandless' retaining member 34 includes two oppositely opposed fingers 80, 82 for holding the glass sheet 32, and each finger 80, 82 terminates in the ***middle*** of the support platform 84. This ensures that the glass sheet 32 is centrally located between the outer glass sheets 24, 26 held by the spacer frame 28 on which the retaining member 34 is mounted. Thus, elements (ii) and (iii) of Appellants' claim 110 (the lower resilient finger and free end portion thereof) are not disclosed by McCandless.

With respect to point (3), Appellants' claim 110 requires the lower resilient finger to be ***generally parallel to said lower surface*** of the upper platform. As noted in the McCandless specification (Figure 5 and column 10, lines 28-30), the fingers 80,82 in their unbiased position are provided at an angle of about 30° to the upper surfaces of the support member. And, despite the Examiner's attempted reading of Appellants' claims on Figure 7 of McCandless "viewed … in the state of upside down", it is clear that in its intended operation, the retaining member 34 of McCandless requires the fingers 80, 82 to be ***above*** (not underneath) the support platform 84. Thus, it is indisputable that

Appellants' lower resilient finger, as set forth in claim 110, is not disclosed by McCandless.

With respect to point (4), the Examiner contends that "the part in the middle perpendicular to part 140" (i.e., the support shim 117 of McCandless) anticipates Appellants' claimed muntin retainer. However, support shim 117 cannot possibly function as a muntin retainer "that will maintain the main portion of said muntin bar between and in parallel with the spaced parallel glazing panes" as claimed. Support shim 117 merely prevents the retaining member from dropping between the legs of the spacer frame (Figures 2, 5, 7, 8 and column 7, lines 48-60). It is not a muntin retainer. And, even if an attempt were made to use the Y shaped support shim to retain a muntin bar, the muntin bar would point downward, in the opposite direction that the glass sheets 24, 26 and 32 point. Thus, any such muntin bar would not be maintained ***between and in parallel with the spaced parallel glazing panes*** as set forth in Appellants' claim 110. It is therefore clear that McCandless does not disclose element (iv) of claim 110 (the muntin retainer).

With respect to point (5), Appellants' claim 110 requires the clip to be resiliently coupled to a portion of a mounting structure of the sash via a free end portion of the lower resilient finger. McCandless discloses three different ways for mounting the retaining member 34 to the spacer frame 28. These are by (a) edge clamping, (b) a groove, or (c) mechanical or adhesive means. None of these are equivalent to Appellants' claimed mounting structure where a lower resilient finger, that extends from a first side of an upper platform generally parallel to a lower surface of the upper platform substantially all the way to a second side of the upper platform opposite the first side, is used to resiliently couple the clip to a portion of the sash mounting structure. Accordingly, McCandless clearly does not disclose the structure or contain the elements set forth in Appellants' claim 110.

Since McCandless does not disclose each and every element of Appellants' claim 110, this claim is not anticipated by the cited reference.

(7)(3.3) Discussion of Final Office Action and Rejection of Dependent Claims 111-114 and 116-123

The arguments set forth above with respect to independent claim 110 apply equally to Appellant's dependent claims 111-114 and 116-123, which each ultimately depend from claim 110. Further distinctions as to each claim are set forth below.

Claim 111

Claim 111 requires the lower resilient finger to be configured to flex upon insertion between glazing legs of the mounting structure. The Examiner has read Appellants' claimed lower resilient finger on element 82 of McCandless. However, element 82 is used together with element 80 to capture the glass sheet 32. Element 82 is not used to retain a clip between glazing legs, as specified in claim 111. Thus, claim 111 is not anticipated by McCandless.

Claim 112

Claim 112 requires at least one of the upper platform and lower resilient finger to be adapted to align the muntin retainer when mounted to the mounting structure, despite variations in the dimensions of the mounting structure. McCandless does not disclose a muntin retainer. Thus, claim 112 is not anticipated by McCandless.

Claim 113

Claim 113 requires the end portion of the lower resilient finger to be configured to couple to a locating notch formed in the mounting structure. McCandless does not disclose a lower resilient finger with an end portion as claimed. Moreover, McCandless does not disclose a locating notch, such as notch 207 shown in Appellants' Figure 20A (also seen in Figure 22A). Thus, claim 113 is not anticipated by McCandless.

Claim 114

Claim 114 requires the first side and second side of the upper platform to be configured to resiliently mount to the mounting structure. The Examiner has read

Appellants' upper platform on element 140 of McCandless. However, element 140 does not extend over the ends 90 of the spacer frame 28. Instead, element 140 is disposed between the opposed ends 90, as shown in Figures 2 and 7, and does not itself mount to the spacer frame 28. Thus, claim 114 is not anticipated by McCandless.

Claim 116

Claim 116 requires the first and second sides of the upper platform of claim 114 to be mountable on top walls of glazing legs forming the mounting structure. As described in connection with claim 114, element 140 does not extend over ends 90 of the McCandless spacer frame 28, and therefore is not mountable on top walls of a mounting structure as claimed. Thus, claim 116 is not anticipated by McCandless.

Claim 117

Claim 117 requires the lower resilient finger to be configured to flex when inserted into a portion of the mounting structure. There is no equivalent lower resilient finger in McCandless, as discussed in detail above. Thus, claim 117 is not anticipated by McCandless.

Claim 118

Claim 118 requires the lower resilient finger to snap-fit to the mounting structure. There is no equivalent lower resilient finger in McCandless, as discussed in detail above. Thus, claim 118 is not anticipated by McCandless.

Claim 119

Claim 119 requires the upper platform to be adapted to snap-fit to the mounting structure. As McCandless does not disclose a clip as claimed by Appellants, it does not anticipate claim 119.

Claim 120

Claim 120 requires the upper platform and lower resilient finger to be integral. There is no equivalent lower resilient finger in McCandless, as discussed in detail above. Thus, claim 120 is not anticipated by McCandless.

Claim 121

Claim 121 requires the lower resilient finger to be cantilevered from the upper platform. There is no equivalent lower resilient finger in McCandless, as discussed in detail above. Thus, claim 121 is not anticipated by McCandless.

Claim 122

Claim 122 specifies that the angle from which the muntin retainer projects from the upper surface of the upper platform of claim 107 is 90°. As McCandless does not disclose a muntin retainer, it does not anticipate claim 122.

Claim 123

Claim 123 specifies that the angle from which the muntin retainer extends away from the upper surface of the upper platform of claim 110 is 90°. As McCandless does not disclose a muntin retainer, it does not anticipate claim 123.

(8) CONCLUSION

Appellants respectfully submit that the present invention as set forth in pending claims 107, 110-114 and 116-123 is not anticipated by McCandless. In particular, McCandless does not disclose a clip for mounting a muntin bar, does not disclose Appellants' claimed lower resilient finger for mounting a clip to an integrated sash structure, and does not disclose a muntin retainer. The Examiner's attempt to read Appellants' claimed structure on the McCandless structure "viewed ... in the state of upside down" simply fails to support the anticipation rejection of record.

Similarly, the proposed reading of claim 108 on the Boone et al. structure is flawed. For example, Boone et al. does not disclose a clip for mounting a muntin bar that has an outwardly projecting retainer adapted to hold at least one of a muntin bar or additional glazing pane.

In view of the above, reversal of the rejections set forth in the Final Office Action is respectfully requested.

Respectfully submitted,

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(9) CLAIMS APPENDIX

The claims involved in the appeal, namely claims 107-108, 110-114 and 116-123, are as follows:

107. A clip for mounting a muntin bar between spaced parallel glazing panes of an integrated sash, comprising:

an upper platform;

a lower resilient finger extending from a first side of said upper platform generally parallel to and underneath said upper platform substantially all the way to a second side of said upper platform opposite said first side for releasably mounting said clip to the integrated sash; and

a muntin retainer for engaging the end portion of said muntin bar, said muntin retainer projecting from an upper surface of the upper platform at a substantially 90° angle that will maintain the main portion of said muntin bar between and in parallel with the spaced parallel glazing panes.

108. A clip for positioning at least one of a muntin bar or additional glazing pane between a pair of spaced glazing panes, comprising:

a base,

a base support including a pair of side walls disposed on a bottom side of the base,

the base support being adapted to mount the clip in a channel of a spacing and mounting structure located between said pair of spaced glazing panes, and a retainer projecting outwardly from and substantially perpendicularly to said base, said retainer being adapted to hold said at least one of a muntin bar or additional glazing pane.

110. A clip for mounting, between spaced parallel glazing panes of an integrated sash, a muntin bar having an end portion for engagement with said clip and a main portion for providing a decorative effect visible between said glazing panes, said clip comprising:

an upper platform including an upper surface and a lower surface opposite said upper surface;

a lower resilient finger extending from a first side of said upper platform proximate said lower surface and generally parallel to said lower surface substantially all the way to a second side of said upper platform opposite said first side, said lower resilient finger including a free end portion configured to resiliently couple to a portion of a mounting structure of said sash; and

a muntin retainer for engaging the end portion of said muntin bar, said muntin retainer extending away from said upper surface of said upper platform at a substantially 90° angle that will maintain the main portion of said muntin bar between and in parallel with the spaced parallel glazing panes.

111. The clip of claim 110 wherein said lower resilient finger is configured to flex upon insertion between glazing legs of said mounting structure and retain the clip between said glazing legs.

112. The clip of claim 110 wherein at least one of said upper platform and said lower resilient finger is adapted to align said muntin retainer when mounted to said mounting structure despite variations in the dimensions of said mounting structure.

113. The clip of claim 110 wherein said end portion of said lower resilient finger is configured to couple to a locating notch formed in said mounting structure.

114. The clip of claim 110 wherein said first side and said second side are configured to resiliently mount to said mounting structure.

116. The clip of claim 114 wherein said first side and said second side of said upper platform are mountable on top walls of glazing legs forming said mounting structure.

117. The clip of claim 110 wherein said lower resilient finger is configured to flex when inserted into a portion of said mounting structure.

118. The clip of claim 110 wherein said lower resilient finger is adapted to snap-fit to said mounting structure.

119. The clip of claim 110 wherein said upper platform is adapted to snap-fit to said mounting structure.

120. The clip of claim 110 wherein said upper platform and said lower resilient finger are integral.

121. The clip of claim 110, wherein said lower resilient finger is cantilevered from said upper platform.

122. The clip of claim 107 wherein said angle is 90°.

123. The clip of claim 110 wherein said angle is 90°.

(10) EVIDENCE APPENDIX

EVIDENCE EXHIBIT A (attached)

- Copy of US Patent 6,286,288 incorporated by reference into the present application -- see Appellants' specification, paragraph [0003].

EVIDENCE EXHIBIT B (attached)

- Annotated version of Figures 22A and 22B. An equivalent annotated version of these figures was attached to Appellants' Amendment filed on April 11, 2006.

EVIDENCE EXHIBIT C (attached)

- Sample of clip. A sample of the same clip was given to the Examiner during the October 6, 2005 personal interview in this application, as set forth on the Examiner Interview Summary Record (Form PTOL-413) of the same date.